

**Department of Legislative Services**  
Maryland General Assembly  
2019 Session

**FISCAL AND POLICY NOTE**  
**Third Reader**

Senate Bill 978

(Senator Serafini)

Judicial Proceedings

Rules and Executive Nominations

---

**Real Property - Agricultural Land Preservation Easements - Separate Parcels**

---

This bill extends the termination date of Chapter 662 of 2017 from June 30, 2019, to June 30, 2021. **The bill takes effect June 1, 2019.**

---

**Fiscal Summary**

**State Effect:** The bill is not expected to materially affect State finances.

**Local Effect:** The bill is not expected to materially affect local government finances.

**Small Business Effect:** Minimal.

---

**Analysis**

**Current Law:** Chapter 662 of 2017 establishes that, with respect to an agricultural land preservation easement granted to the Maryland Agricultural Land Preservation Foundation (MALPF) on or before December 31, 1999, unless the deed granting the easement expressly provides otherwise, the grant of an easement governing two or more separate parcels of land owned by the same grantor under separate deeds, or two or more parcels separately identified and described in the same deed, does not consolidate the parcels for any other purpose, if the parcels are described separately in the deed granting the easement.

One of the parcels of land may be conveyed separately to a child of the original grantor with the approval of MALPF in accordance with the criteria, eligibility requirements, and procedure for an agricultural subdivision and corrective easement established by regulation by MALPF. MALPF's approval must also be in accordance with the requirement established by Chapter 662 that, as a part of its review of a request by an original grantor

of an easement for an agricultural subdivision of land subject to the easement and a corrective easement of land subject to the easement, it must apply the acreage requirements for agricultural subdivisions that existed at the time the easement was purchased. The conveyed parcel remains subject to the easement in perpetuity. Chapter 662 applies retroactively to any agricultural land preservation easement granted to MALPF before June 1, 2017; however, as noted above, certain provisions only apply to easements granted to MALPF on or before December 31, 1999.

## **Background:**

### *Court of Special Appeals Decision*

The Maryland Court of Special Appeals, in *Stitzel v. State* (2010), upheld a circuit court decision that voided a conveyance of a separate parcel of land subject to an agricultural land preservation easement granted to MALPF, without MALPF's approval of the conveyance. In the case, the easement and a district agreement (a prerequisite to the sale of an easement until a change in the law in 2007) between MALPF and the landowner, prohibited subdivision of the land for any purpose without the approval of MALPF. Despite the landowner's argument that the land was subdivided prior to the district agreement and the easement, since the parcels were separate at the time of the agreement and easement, the circuit court concluded that in the context of the MALPF statute and regulations and the language of the agreement and easement, the conveyance constituted a subdivision and was prohibited.

The circuit court noted that MALPF statute and regulations did not expressly state that a contract or agreement in violation of the statute or regulations was void or unenforceable, but after balancing the interest in the enforcement of the conveyance (*e.g.*, the interested parties' expectations and any loss if enforcement is denied) against public policy considerations (*e.g.*, the effect on the MALPF program of enforcing the conveyance), the court concluded that public policy considerations required the specific conveyance to be voided.

### *Agricultural Subdivision and Corrective Easement Regulations*

MALPF regulations governing agricultural subdivision of land encumbered by an agricultural land preservation easement establish a general prohibition against subdivision, but indicate that the foundation may give written approval to a landowner's request for an agricultural subdivision for reasons the foundation considers sufficiently extraordinary to justify an exception to the prohibition against subdivision. Under the regulations, requests must be reviewed by MALPF on a case-by-case basis to determine if, in the foundation's opinion (1) the proposed agricultural subdivision serves an agricultural purpose; (2) the proposed agricultural subdivision will enhance or have no effect on the agricultural

operations being conducted on the land; and (3) the resulting divided parcels from the agricultural subdivision are able to sustain long-term agricultural production, independent of each other. Corrective easements (a modification of an existing easement to create two or more separately enforceable easements) are required in order to formalize MALPF's approval of an agricultural subdivision. The landowner must pay for the cost of all title work, title insurance premiums, surveys, and documentation necessary to complete the agricultural subdivision.

The regulations require that the resulting divided parcels each be at least 50 acres, subject to specified exceptions.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Montgomery County; Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Department of General Services; Department of Legislative Services

**Fiscal Note History:** First Reader - March 11, 2019  
mm/lgc Third Reader - April 8, 2019

---

Analysis by: Michael Sanelli

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510